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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/808,455	03/25/2004	Darko Pervan	1033462-000045	4858

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EXAMINER
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GILBERT, WILLIAM V

ART UNIT	PAPER NUMBER
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3635

NOTIFICATION DATE	DELIVERY MODE
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06/03/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/808,455	<b>Applicant(s)</b> PERVAN, DARKO	
	<b>Examiner</b> William V. Gilbert	<b>Art Unit</b> 3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 February 2008.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 3-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)            | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>10 January 2008</u> .   | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

This is a non-final action. Claim 2 is cancelled. Claims 1 and 3-19 are pending.

### ***Claim Objections***

1. **Claims 4-7** are objected to because of the following informalities: per claims 4 and 5, lack of antecedent basis "the subfloor" per line 2 of each claim; per claim 7, "the front side of the board" lacks antecedent basis; per claims 7 and 10, applicant draws limitations to "the short sides" and "the long sides", but claim 6, from which claims 7 and 10 depend, references first and second long sides and first and second short sides, and claim 10 should be clarified. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 1, 3-7, 10 and 13-19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Evjen (U.S. Publication 2004/035079) in view of Theirs (U.S. Publication 2006/0032168).

Claim 1: Evjen discloses a floor panel system comprising rectangular floorboards (paragraph 0044) which are mechanically lockable, the system having pairs of opposing connectors for locking similar floorboards both vertically and horizontally (Figs. 1B-1E) and the other sides have connectors that lock only horizontally (Fig. 5A), the connector of the floorboards are designed to allow locking together of one of the sides (the one locked both vertically and horizontally) by angling along an upper joint edge (see Figs. 1B-1E generally). While Evjen discloses that the panels can be rectangular, it does not disclose which connection is used on the long side and which

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connection is used on the short side. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the vertical and horizontal connection on the long sided and the "horizontal connection only" on the short side because the connection can function properly with either connection on the long or short side. In addition, Evjen does not disclose the panels are in a mirror-inverted fashion. Thiers discloses panels (Fig. 1: 2, 3) that appear to be mirror images (as shown in the drawings.) It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have two panels that are mirror images in order to provide the options for additional pattern forming with the panels. Applicant should respectfully note that the particular connection in Thiers is not the focus of the rejection, but rather that panels can be made in a mirror-image fashion for connection.

Claim 3: the horizontal locking is by an essentially vertical motion (Evjen: Fig. 5A).

Claims 4 and 5: the floorboards are disconnectable by an angular motion away from the subfloor (portion shown in Fig. 5A would be disconnected by a vertical angle.)

Claim 6: the connectors of the floorboards lock by an angling motion on the long sides (Evjen: Figs 1B-1E) and

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vertical motion on the short sides (Fig. 5A) and while the prior art of record does not disclose the particular configuration of the connection as claimed, Evjen in view of Thiers can be configured to meet the limitation as claimed because the prior art (as shown in Thiers) can be configured in numerous manners (see e.g. Figs. 1, 8 and 9-17) so one of ordinary skill in the art at the time the invention was made could configure the panel to virtually any desired connection. For example, by applying the prior art of record, one could make one panel with the long edges have the vertical and horizontal connection and the short edges have the "horizontal only" connection and the mirror-inverted image could be the short edges have the vertical and horizontal connection and the long edges could be the "horizontal only" connection (by interpreting claim 1: "in a mirror-inverted manner relative to the corresponding connectors along the same pair of opposite edge portion". The examiner interpreted the limitation "mirror-inverted" as a two-part limitation: 1) a mirror image and 2) an inverted image where the limitations that applied to the long-edges can apply to the short edges and vice-versa.) Further, the locking surfaces are formed differently in that the lengths of the locking surfaces vary.

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Claim 7: as shown in Evjen, the first locking angle (of the short side, which from dependent claim 6 are secured both vertically and horizontally) are at a higher angle than the long sides (which is horizontal only) because the horizontal and vertical connection require rotation for connection and the horizontal only connection requires only a vertical only connection, which the vertical angle would be 0 degrees and the horizontal and vertical connection would be greater than 0 degrees.

Claim 10: the locking surface has a locking angle perpendicular to the surface of the floorboards (see where the final position of the connection is vertical), and as best understood by the examiner, the short sides have a higher vertical extent than the long sides (as shown in Figs 1B and 5A, below from Evjen, below.)

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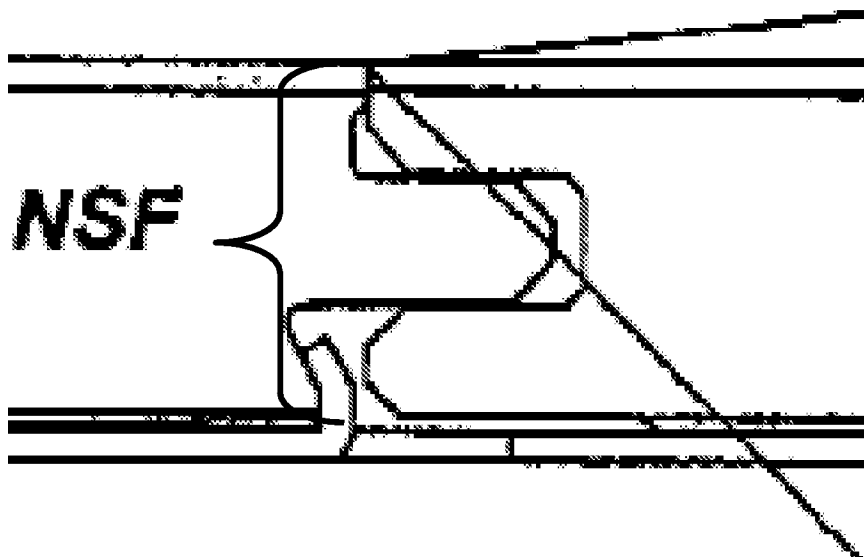


Figure 1B from Evjen

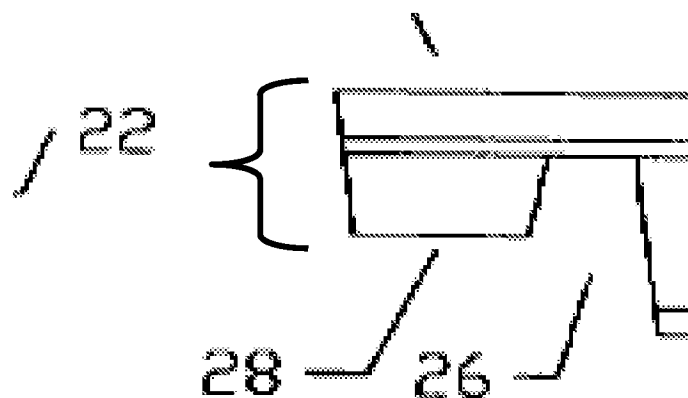


Figure 5A from Evjen

Claim 13: Evjen discloses rectangular floor panels having two sides that lock both vertically and horizontally (Figs. 1B-1E) that allow locking together by an angular motion along an



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upper joint edge (See Figs 1B-1E generally) and two sides allow locking together by an essentially vertical motion (Fig. 5A), and a first row is joined to a second row (see explanation above of "mirror-inverted". While Evjen discloses that the panels can be rectangular, it does not disclose which connection is used on the long side and which connection is used on the short side.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the vertical and horizontal connection on the long sided and the "horizontal connection only" on the short side because the connection can function properly with either connection on the long or short side. In addition, Evjen does not disclose the panels are in a mirror-inverted fashion. Thiers discloses panels (Fig. 1: 2, 3) that appear to be mirror-inverted (as shown in the drawings.)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have two panels that are mirror-inverted in order to provide the options for additional pattern forming with the panels. Applicant should respectfully note that the particular connection in Thiers is not the focus of the rejection, but rather that panels can be made in a mirror-image fashion for connection.

Claims 14 and 16: the floorboards are in parallel rows (see Thiers: e.g. Fig. 1 where panels, 3, are in parallel rows.)

Claim 15: the short sides have cooperating locking surfaces, which are different from the cooperating locking surfaces on the long sides (as shown in the drawings in Evjen.)

Claim 17: Evjen discloses a method for making a flooring of rectangular floorboards where two opposing sides can lock both vertically and horizontally (e.g. Fig. 1B) and two sides lock only in the horizontal direction (Fig. 5A), the first connection allows locking by an angular motion (see Fig. 1B, generally) at an upper joint edge. While Evjen discloses that the panels can be rectangular, it does not disclose which connection is used on the long side and which connection is used on the short side.

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the vertical and horizontal connection on the long sided and the "horizontal connection only" on the short side because the connection can function properly with either connection on the long or short side. In addition, Evjen does not disclose the panels are in a mirror image fashion. Thiers discloses panels (Fig. 1: 2, 3) that appear to be mirror inverted (as shown in the drawings.)

It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have two panels that are mirror-inverted in order to provide the options for additional pattern forming with the panels. Applicant should

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respectfully note that the particular connection in Thiers is not the focus of the rejection, but rather that panels can be made in a mirror-inverted fashion for connection. The result of this combination of the prior art of record would result in the panels being connected as claimed.

Claim 18: Evjen discloses a flooring system with a first pair of connection that locks in the vertical and horizontal direction (Fig. 1B) and a second pair of connections that lock the panel only horizontally (Fig. 5A), the floorboards are laminate (paragraph 0016) and the joining and disconnecting is angular. While Evjen discloses that the panels can be rectangular, it does not disclose which connection is used on the long side and which connection is used on the short side. It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have the vertical and horizontal connection on the long sided and the "horizontal connection only" on the short side because the connection can function properly with either connection on the long or short side. In addition, Evjen does not disclose the panels are in a mirror-inverted fashion and connected in a herringbone fashion. Thiers discloses panels (Fig. 1: 2, 3) that appear to be mirror images (as shown in the drawings) and connected in a herringbone pattern (e.g. Fig. 1). It would have been obvious at the time

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the invention was made to a person having ordinary skill in the art to have two panels that are mirror images in order to provide the options for additional pattern forming with the panels. Applicant should respectfully note that the particular connection in Thiers is not the focus of the rejection, but rather that panels can be made in a mirror-inverted fashion for connection.

Claim 19: Evjen discloses the short sides are adapted for locking the floorboards only horizontally (5A).

**Claims 8, 9, 11 and 12** are rejected under 35 U.S.C. 103(a) as being unpatentable over Evjen and Thiers as applied to the claims above, and further in view of Pervan (U.S. Patent No. 6,023,907).

Claims 8 and 11: Evjen discloses the claimed invention including a separate strip (Fig. 1B: 8), but not that the strip is fiberboard. Pervan discloses a wooden floorboard (which is fibrous) with a separate strip (6) than can be integrally formed with the panel (Col. 7, lines 8-15, which means it is also wood, which is fibrous). It would have been obvious at the time the invention was made to a person having ordinary skill in the art to have a panel with a separate fibrous strip because this type of strip is functionally equivalent to the connection disclosed

in Evjen and would perform equally as well. While noted that the strip can be integrally formed with the panel, which the examiner interprets as the strip would be made of the same material as the panel, the species note that the strip can be separate. As a result, it would have been obvious at the time the invention was made to a person having ordinary skill in the art to have a separate strip made of the same material as a matter of functional equivalence that would perform equally as well as the strips made of various materials.

Claims 9 and 12: while Evjen discloses a separate strip, it does not disclose the strip is made of aluminum. Pervan discloses a panel with a strip (6) made of aluminum (Col. 7, lines 8-15). It would have been obvious at the time the invention was made to a person having ordinary skill in the art because an aluminum strip would function properly as the clip in Evjen.

### ***Response to Arguments***

3. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to William V. Gilbert whose telephone number is 571.272.9055. The examiner can normally be reached on Monday - Friday, 08:00 to 17:00 EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Chilcot can be reached on 571.272.6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/W. V. G./  
Examiner, Art Unit 3635  
/Basil Katcheves/  
Primary Examiner, Art Unit 3635